a given point the liability should be consistently regarded as either contractual or statutory. On the point involved in the present case the decisions of the United States Supreme Court are in some confusion. *Carrol* v. *Green*, 92 U. S. 509; *Platt* v. *Wilmot*, 193 U. S. 602, 24 Sup. Ct. 542. The courts in general are divided. *Hancock National Bank* v. *Farnum*, 20 R. I. 466; *Cork & Bandon Ry. Co.* v. *Goode*, 13 C. B. 826; *Hawkins* v. *Furnace Co.*, 40 Oh. St. 507. The result reached in the principal case seems satisfactory and in accord with the principle that the extraordinary liability should not be imposed beyond the clear provisions of the statute. See *Gray* v. *Coffin*, 9 Cush. (Mass.) 192. It is supported by the weight of authority. It seems to be settled, however, that the double liability imposed by the National Banking Act is statutory. *McClaine* v. *Rankin*, 197 U. S. 154, 25 Sup. Ct. 410. See 18 HARV. L. REV. 620.

COVENANTS OF TITLE — COVENANT AGAINST ENCUMBRANCES AND COVENANT OF WARRANTY — WHETHER BROKEN BY TRESPASS. — A. sold growing timber to B. He then sold the land, on which the timber was growing, to C., and gave a full warranty deed. C. recorded his deed and thus deprived B. of any right in the trees. Nevertheless B. entered and cut them. C. sued A. for breach of warranty. *Held*, that C. can recover. *Thomas* v. *West*, 116 Pac. 1074 (Wash.).

The court placed its decision on the ground that the covenant against encumbrances was broken as soon as made, and that the covenant for quiet enjoyment was broken by a trespass, induced by the grantor. Clearly there is no merit in the first reason, for there was no encumbrance, *i. e.*, no "charge upon the land which would compel the grantee to pay money to relieve it." See *Redmon* v. *Phœnix Fire Ins. Co.*, 51 Wis. 292, 300, 8 N. W. 226, 229. *Cf. Marple* v. *Scott*, 41 Ill. 50, 61; *Wilkins* v. *Irvine*, 33 Oh. St. 138. The second point turns on the question whether the grantor can be said to have induced the first grantee to commit the trespass. For it is settled that a trespass by a third person is not a breach of the covenant for quiet enjoyment. *Hayes* v. *Bickerstaff*, Vaugh. 118. And, on the other hand, a trespass by the grantor or his agents is such a breach. *Seaman & Browning's Case*, 1 Leon. 157. Neither on principles of agency nor on the weight of authority should the grantor be held responsible for such acts of trespass as in the principal case. *Lamb* v. *Willis*, 125 N. Y. App. Div. 183, 109 N. Y. Supp. 75. To hold otherwise is to confuse a *causa sine qua non* with a legal cause.

CRIMINAL LAW — TRIAL — WAIVER OF USUAL PROCEDURE. — After all the evidence was in, one of the jurors was changed, and all the jurors were then sworn. The only evidence presented to these jurors was the reading of the testimony which had been taken before the original jurors. The accused consented to these proceedings. *Held*, that the conviction is illegal. *People* v. *Toledo*, 72 N. Y. Misc. 635, 130 N. Y. Supp. 440. See NOTES, p. 179.

DECEIT — GENERAL REQUISITES AND DEFENSES — LOSS OF DISPUTED CLAIM AS DAMAGE. — The plaintiff was induced by the misrepresentations of the defendant's agent to compromise for a small sum her claim against the defendant. The charge of the trial court required the plaintiff to prove only facts sufficient to warrant a reasonable belief in herself and the defendant that the claim was just. *Held*, that the charge should have required the plaintiff to prove that her claim was valid. *Urtz* v. *New York Central & H. R. R. Co.*, 95 N. E. 711 (N. Y.).

The damages in deceit should at least equal the loss incurred by the plaintiff. *Krumm* v. *Beach*, 96 N. Y. 398; *Smith* v. *Bolles*, 132 U. S. 125, 10 Sup. Ct. 39. The loss of a disputed claim has been recognized by the New York court as legal damage. *Gould* v. *Cayuga County National Bank*, 99 N. Y. 333, 2 N. E. 16. In estimating its value it would seem impracticable and contrary to

economic principle to take into account the actual outcome of the trial, of which all the parties were necessarily ignorant at the time of the representation. Thus in contracts the loss of an invalid claim has been held to be detriment. *Callisher* v. *Bischoffsheim*, L. R. 5 Q. B. 449. As there is, then, a certain loss, independent of the validity of the claim, the better rule today leaves to the jury the question as to its amount. *Wakeman* v. *Wheeler, etc. Co.*, 101 N. Y. 205, 4 N. E. 264. The evidence required by the lower court would seem sufficient to make this problem an easy one. Furthermore, if the upper court's decision is accepted, such a misrepresentation as this could in no case involve loss to the guilty party, while it would gain for him at least a delay in the prosecution of the suit against him.

EASEMENTS — MODES OF ACQUISITION — PAROL LICENSE ACTED ON. — The defendant orally agreed that a way should be opened across his land to give access to the public highway, which the plaintiff should have the right to use in common with the defendant and others as long as the defendant should live or own the land, if the plaintiff would build and keep in repair a necessary bridge. This the plaintiff did, and with the defendant used the road until the latter obstructed it with a fence. *Held*, that the defendant should be enjoined from obstructing the way. *Arbaugh* v. *Alexander*, 132 N. W. 179 (Ia.).

Under a parol license from the owner, the plaintiff telephone company erected a pole and wires on property, which, after two years, was acquired by the defendant railway company for its right of way. The plaintiff sues for damages for the cost of removing the wires from the pole and conducting them underground across the right of way at the request of the defendant. *Held*, that, since the license executed by the expenditure of money and labor has become irrevocable and, as an easement, is a burden on the estate in the hands of the defendant, the plaintiff should recover. *Indianapolis & C. Traction Co.* v. *Arlington Tel. Co.*, 95 N. E. 280 (Ind.).

These cases illustrate the confusion in the law over parol licenses and parol agreements to grant an easement. *Mine La Motte, etc. Co.* v. *White*, 106 Mo. App. 222, 80 S. W. 356. Considerable authority apparently holds that an executed parol license is irrevocable. *Clark* v. *Glidden*, 60 Vt. 702, 15 Atl. 358; *Brantley* v. *Perry*, 120 Ga. 760, 48 S. E. 332. But the weight of authority is believed to be *contra*. *Hodgkins* v. *Farrington*, 150 Mass. 19, 22 N. E. 73; *Crosdale* v. *Lanigan*, 129 N. Y. 604, 29 N. E. 824. Many of the cases might have been put on the ground of enforcement in equity of parol agreements within the statute of frauds. *Pope* v. *Henry*, 24 Vt. 560; *Munsch* v. *Stelter*, 109 Minn. 403, 124 N. W. 14. Thus numerous cases deny relief because the agreement was too indefinite or the part performance insufficient. *Cronkhite* v. *Cronkhite*, 94 N. Y. 323; *Thoemke* v. *Fiedler*, 91 Wis. 386. Under these tests the Iowa case is well supported. *Flickinger* v. *Shaw*, 87 Cal. 126, 25 Pac. 268; *Van Horn* v. *Clark*, 56 N. J. Eq. 476, 40 Atl. 203. The Indiana case is distinguishable by the absence of a contract. See 13 HARV. L. REV. 54. It has been declared in cases involving parol gifts of land that without any contract jurisdiction exists to restrain unconscionable revocation resulting in irreparable injury. *Freeman* v. *Freeman*, 43 N. Y. 34; *Seavey* v. *Drake*, 62 N. H. 393. The application of this to parol licenses is usually met by the difficulty of finding in a mere permission any assurance of permanent enjoyment. *St. Louis National Stock Yards* v. *Wiggins Ferry Co.*, 112 Ill. 384; *Minneapolis Mill Co.* v. *Minneapolis & St. L. Ry. Co.*, 51 Minn. 304, 53 N. W. 639. It has been said that it must be implied from the nature of any license which requires a large and inherently permanent expenditure for its enjoyment. *Cook* v. *Pridgen*, 45 Ga. 331; *Decorah Woolen Mill Co.* v. *Greer*, 49 Ia. 490. But the facts of the Indiana case do not bring it within this doctrine.